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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,295	04/05/2007	Gerrit Wolk	016906-0477	6222
22428	7590	12/22/2008	EXAMINER	
FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007				WALBERG, TERESA J
ART UNIT		PAPER NUMBER		
3744				
MAIL DATE		DELIVERY MODE		
12/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/571,295	WOLK, GERRIT
	<b>Examiner</b>	<b>Art Unit</b>
	Teresa J. Walberg	3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 09 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/9/06</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 7,147,047 to Wolk in view of Sugimoto et al (EP 0 773 419)(cited by applicant). Claim 10 of Wolk recites the same structure as claim 1 of the present application, but does not require that the flat tubes be arranged in at least two rows. Sugimoto et al discloses a heat exchanger in which flat tubes (21, 31 in Fig. 1) are arranged in two rows (Fig. 1). It would have been obvious in view of Sugimoto et al to use at least two rows of tubes in the heat exchanger of Wolk, the motivation being to enable the use of additional flow paths in the heat exchanger.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ozaki et al (6,213,196).

Ozaki et al disclose a heat exchanger having flat tubes (111, 121 in Fig. 3) through which fluids can flow and which can be externally exposed to a second fluid and which are arranged approximately parallel to one another and transversely to the direction of flow of the second fluid in at least two rows (Fig. 3), each first fluid being assigned at least one row of tubes (Fig. 3), the flat tubes in a row being spaced apart forming flow paths for the second fluid (Fig. 3), cooling fins (112, 122) being arranged in the flow paths between the flat tubes (111, 121), multiple corrugated fins are arranged in series in the direction of flow of the second fluid and laterally offset in relation to one another (Figs. 3 and 4), multiple corrugated fins arranged in series are formed from a common strip (Fig. 4), the surfaces of the corrugated fins are arranged fundamentally parallel to the direction of flow of the second fluid (Figs. 3 and 4), multiple offset corrugated fins are similarly shaped (Figs. 3 and 4), at least one of the corrugated fins has gills for directing the second fluid (Figs. 3 and 4), two successively offset fin sections are fundamentally parallel to one another (Figs. 3 and 4), the fin sections being fundamentally perpendicular to the flat tubes (Figs. 3 and 4), the corrugated fins

extend for an equal or similar distance in the main direction of flow of the second fluid (Fig. 3), different rows of tubes have different fluids flowing through them (Fig. 3).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ozaki et al (6,213,196).

Ozaki et al disclose a heat exchanger having the claimed structure with the exception of one fluid flowing through different rows of tubes. However, it would have been obvious to connect the tubes of Ozaki et al to provide one fluid flowing through different rows of tubes, the motivation being to increase the amount of heat transfer with the fluid.

7. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ozaki et al (6,213,196) in view of Ishida et al (4,580,624).

Ozaki et al disclose a heat exchanger having the claimed structure with the exception of all gills of a fin section bounded by two flat tubes are angled in the same direction, the gills of two successively offset fin sections being angled in the same

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direction, the gills of two successively offset fin sections being angled in opposite directions.

Ishida et al discloses (see Fig. 8) aligning fin gills in each of the recited manners. It would have been obvious in view of Ishida et al to align the gills on the fins of Ozaki et al in any desired combination of directions, the motivation being to adjust the flow pattern as desired based on the intended use of the device.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Emrich et al is cited to show offset fin structure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teresa J. Walberg whose telephone number is 571-272-4790. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Teresa J. Walberg/  
Primary Examiner, Art Unit 3744

/TW/